NZCTU
Te Kauae Kaimahi

Submission to the Education and Workforce Committee on the:

Health and Safety at Work Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

March 2026

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

The CTU supports and endorses the submissions of our affiliated trade unions.

Introduction

1. Good health and safety has long been core work for the union movement. The protection of workers' health and safety is core to the collective role of the union in the workplace. Unions have had a longstanding role in ensuring good health and safety practice at work, and advocating against unsafe systems of work.

2. The CTU is recognised as the collective voice of working New Zealanders on matters of health and safety, for union members and non-union members. This is recognised nationally and internationally in agreed standards, such as the International Labour Organisation Convention 155 on Occupational Health and Safety which mandates consultation between unions (through the CTU), employers (through Business New Zealand) and the Government in the design and implementation of health and safety law.

3. The CTU does not support this bill. The changes proposed are regressive and actively weaken the laws and systems designed to keep workers safe and healthy. Passing this bill into law sends the message that harming workers is acceptable.

4. This bill represents the most significant reform to New Zealand's workplace health and safety system since the introduction of the Health and Safety at Work Act 2015 (HSWA).

5. A critical piece of legislation, HSWA was passed in the wake of one of the worst industrial disasters in New Zealand's history, Pike River, where 29 workers were killed because of serious health and safety failures.

6. Our current health and safety system including HSWA, new/updated regulations, and primary regulator WorkSafe were built out of the work of the resulting Pike River Royal Commission of Inquiry, and the Independent Taskforce on Workplace Health and Safety. These two critical pieces of work provided a comprehensive review of the failings of the New Zealand health and safety system and outlined a path forward.

7. Those changes following Pike were made to ensure that the conditions that killed those 29 men, would not happen again. There was widespread agreement from representatives of workers, business (small and large), health and safety professionals, and politicians that New Zealand needed to do better.

8. With the introduction of this bill, it appears the lessons learned have already been forgotten by this Government. Many of the proposals in this bill actively backtrack on those important advancements; weakening legal duties, diminishing responsibility for workplace health and safety, disincentivising good health and safety practice, sweeping the hidden harm of occupational health under the rug, and overall signalling comfort with a risk tolerant industrial culture.

9. The stated intention of the bill is to focus the system on critical risks, with the key consideration being to reduce 'compliance costs', addressing perceived confusion with legal duties, and addressing so called business over-compliance with health and safety.

10. Health and safety regulation is not red tape bureaucracy, nor should it be regarded as such. Good health and safety laws create the right conditions for workers and employers to agree on the systems and procedures to be implemented to keep workers healthy and safe. This should be our aim. Instead, this bill takes us in the opposite direction.

Summary of Recommendations

- The critical risk framework does not align with a proportionate, risk-based health and safety system or the bill's own stated objectives, and should not proceed. The hierarchy of controls should instead be incorporated into legislation to provide duty holders with clear and practical guidance on meeting their obligations.
- The small PCBU carve-out creates an unjustifiable two-tier health and safety system and should be discarded.
- The ACOP safe harbour provisions disincentivise continuous improvement, and constrain regulatory enforcement, and should not proceed.
- The proposed changes to compliance with overlapping legislation undermine regulatory certainty, risk displacing HSWA duties with legislation never designed to protect workers and should not proceed.
- Clarification of officer duties sought is better achieved through the development of case law than through legislative amendment.
- The commencement date should be set at no less than 12 months after Royal assent to allow adequate time for proper implementation.
- The proposed changes to the purpose of the HSWA and the WorkSafe New Zealand Act are unnecessary and should not proceed.
- The bill fails to consider or address existing inequities in the health and safety system and their disproportionate impact on particular at-risk groups.
- The proposed amendments raise serious concerns regarding breaches of international conventions and agreements.

Amendment driven by ideology not evidence

New Zealand's poor health and safety performance

11. New Zealand injury statistics remain damning, every week in New Zealand 18 workers are killed as a consequence of work, every 15 minutes a worker suffers an injury that requires more than a week off work, and every year an estimated 750-900 New Zealanders die from work-related health illnesses and injuries.

12. Injury and fatality rates have stayed relatively stagnant despite an initial reduction after HSWA was introduced.

13. This is the context in which this bill has been introduced. New Zealand has a health and safety system that is not yet performing at the level it needs to. Enacting lasting change requires greater investment, stronger worker participation, and more robust enforcement, not a systematic reduction in employer obligations, a narrowing of regulatory duties, and a repositioning of the regulator away from enforcement.

14. When contrasted against our most common comparator countries, the scale of harm, lack of resourcing, and failure to mandate good health and safety is exemplified. A worker in New Zealand has a fatality rate (per 100,000 workers) 1.7 times higher than Australia, and 6.5 times greater than that of the United Kingdom. This is despite all three jurisdictions having the same basis for their health and safety regulatory systems.

15. Rather than seeking to bring our legislation and regulation of workplaces in line with these countries, and seeking the positive change that those countries have achieved, we are facing a deliberate winding back of core protections in the name of greater profits for business owners.

Poor consultation and lack of evidence for the proposed changes

16. The CTU is concerned that the submission period for select committee is very short given the significance of the amendments this Bill will make to the primary health and safety legislation. The one-month submission period afforded to the public on this bill is deeply inadequate given the scale and complexity of the reforms being proposed.

17. This short submission period has also been compounded by an inadequate and narrowly targeted consultation. In the regulatory impact statement, it is stated that MBIE held a wide-ranging public consultation on the health and safety system.[1]

18. The CTU's view is that the public consultation undertaken to inform the development of the Health and Safety at Work Amendment Bill was grossly inadequate.

19. We contest the framing of this consultation as wide-ranging. The consultation process appeared designed to capture the voice of businesses, particularly small businesses. The sessions that made up the Minister's "Roadshow" were hosted by business associations and required tickets to attend. As the consultation roadshow progressed, public

[1] Regulatory Impact Statement – Work Health and Safety Reforms page 2

attendance became more restricted. The CTU had to host its own session to ensure workers had a targeted opportunity to provide input, which MBIE was initially reluctant to even attend.

20. This narrow consultation has informed the problem definition and the proposed amendments.

21. For example, it is claimed in the two regulatory impact statements that consultation feedback identified a broad "fear of WorkSafe arising from difficult engagements or inconsistent treatment" and frustration of "overcompliance". There is however no clear evidence that this is the case.

22. WorkSafe's Impacts Effectiveness survey[2] found that 68% of surveyed businesses agreed that they knew more about their health and safety requirements following an engagement with WorkSafe inspectors; and 73% of respondents identified workplace health and safety improvements due to their interactions with WorkSafe.

23. Other WorkSafe performance measures indicate a mostly positive experience for businesses interacting with WorkSafe:

Performance/impact measure	Target	2024/2025 actual
The percentage of recipients satisfied with WorkSafe's interventions	70%	Achieved 97%
The percentage of people who make a change after interaction with WorkSafe	≥85%	Achieved 95%
The percentage of businesses that improve workplace safety following improvement notices	≥95%	Achieved 95%

Selected WorkSafe performance and impact measures – WorkSafe annual report 24/25

24. It is also hard to reconcile the claims when comparing the sheer number of New Zealand businesses with the scale of WorkSafe interventions.

25. Statistics New Zealand data shows that New Zealand had a total 617,330 enterprises, as of February 2025. Accounting for enterprises that have no employees (n=455,730) this leaves a total of 161,600 enterprises with at least one employee. WorkSafe's annual regulatory activity is outlined in the organization's annual report. Using these two data sets, we can see that the number of enterprises WorkSafe has engaged with on an annual basis does not align with concerns about an overzealous regulator, and claims that businesses are scared of WorkSafe appear dubious.

[2] Impact Effectiveness of General Inspections 1 July 2024 to 30 June 2025 | WorkSafe

Activity	2024/25	Maximum % of NZ enterprises this regulatory activity could impact (Enterprises with 1 or more employees)	Maximum % of NZ enterprises this regulatory activity could impact (Enterprises with 6 or more employees)
Assessments both planned and in response to notifications completed	13,170	8.1	21.8
Notifications received	10,402	6.4	17.2
Improvement notices issued	5,194	3.2	8.6
Directive letters issued	2,678	1.7	4.4
Sustained compliance letters issued	1,314	0.8	2.2
HSWA verbal directions issued	1,179	0.7	2.0
Prohibition notices issued	1,002	0.6	1.7
Enforceable undertaking discharged (completed) by WorkSafe (s123 of HSWA)	3	0.002	0.005
Enforceable undertakings accepted by WorkSafe (s123 of HSWA)	3	0.002	0.005
Enforceable undertakings ordered by Court (s156 of HSWA)	1	0.001	0.002
Enforceable undertakings discharged (completed) by Court (s156 of HSWA)	1	0.001	0.002
Prosecutions disposed	39	0.02	0.06
HSWA infringement notices issued	4	0.002	0.007

WorkSafe regulatory activity compared with New Zealand Enterprise data | WorkSafe and Statistics NZ

26. Overall, there is no evidence provided that the proposed changes will actually improve system outcomes. And the quality assurance statement for the Regulatory Impact Statement – Work Health and Safety Reforms suggests that there is inadequate backing for the key claims these reforms rely on "*The arguments in the RIS that the 2015 workplace health and safety reforms have led to excessive compliance costs and insufficient focus on critical risks, and that enhanced guidance will address this, are less well-developed*".

Comments on Amendments

Commencement date

27. Should this bill proceed we recommend that the commencement date be 12 months after Royal assent, to ensure adequate time for workplaces to adjust health and safety procedures and arrangements, and to give time for PCBUs and workers to agree and embed better standards.

28. This timeframe would also provide health and safety regulators with an adequate lead-in time to adjust to these changes. MBIE outlines in its RIS that WorkSafe will need to train staff; change business processes, information technology systems, and guidance material, as well as engage stakeholders and review operational policy and legal positions. MBIE states "*The full reforms are a significant change, and careful planning and prioritising will be required to inform the transition and commencement of the new*

system"[3] such change requires significant time and resource that the current commencement date does not provide.

Changes to the purpose of HSWA and the WorkSafe Act

29. This change is unnecessary and does not accurately represent the wide ranging and important functions and purposes of these pieces of legislation.

Defining critical risk

30. Critical risk management is already an important component of good health and safety practice. This is underpinned in our risk-based approach, where PCBUs must do what is reasonable and practicable to eliminate (or otherwise minimise) risks created by their work. What this looks like differs across businesses and industries.

31. The effectiveness of a risk-based health and safety system comes from its capacity to identify and respond to all applicable workplace hazards, where duty holders think about workplace health and safety at a systems level. Health and safety legislation is by necessity broad in application, to ensure that all risks are dealt with proportionately.

32. Therefore, while we agree that risks to health and safety that cause the most serious harm should be prioritized at the enterprise level, this should not be forced through narrow legislative amendments that constrict the scope of how harm is viewed.

33. One of the key failings of this amendment is the inclusion of the word "likely" into the new s22A(b). Requiring workplaces to subjectively judge whether death, notifiable injuries or illnesses, incidents, or occupational diseases are likely, with no criteria provided, is concerning. This is a highly subjective analysis and there is huge scope for issues with interpretation, not only within organizations, but across workplaces and supply chains.

34. Research shows that attitudes and perceptions of workplace risk are fluid and subjective.[4] And we that this subjective perception differs widely between PCBUs, and even between managers, and workers within a business.

35. Secondly, the definition introduces through schedule 1A a tick-box list of 'critical risk' hazards, pulled from the current suite of health and safety regulations in force. This new schedule is far too restrictive. Many of these regulations are out of date, and there are significant gaps in the regulatory suite where the Minister of Workplace Relations and Safety regressively paused all work on new regulations at the start of this term of government. This was despite MBIE advice that the outdated and incomplete regulatory system "*is creating uncertainties and inefficiencies for businesses and the regulator, in areas of risk that significantly contribute to ongoing work-related harm*".[5]

[3] Regulatory Impact Statement Work Health and Safety Reforms – Further Policy Decisions on the Reform Bill at [70]
[4] Health and Safety Attitudes and Behaviours in the New Zealand Workforce: A study of Workers and Employers
[5] Briefing for the Incoming Minister for Workplace Relations and Safety November 2023 | Ministry of Business, Innovation and Employment.

36. This failing means there are significant gaps in the proposed definition, particularly regarding work with plant and structures (which includes working from heights), as well as hazardous substances and work. Both of these are regulations that industry is awaiting.

37. We note that finishing the suite of regulations was a key recommendation of the Independent Taskforce in 2013.

38. Thirdly, while the new schedule 1A definition of critical risk is notable for including occupational health, which is often overlooked, it is far too restrictive. The proposed amendment includes reference only to those occupational diseases listed in schedule 2 of the Accident Compensation Act. These are occupational diseases where there is such a well-established connection between a type of work and an occupational disease that there is no question as to a causal link.

39. These are, however, not the only occupational diseases caused by work that are fatal, and/or able to cause significant injury. This is acknowledged in the Accident Compensation Act through s30, where cover for work-related gradual process, disease, or infection (i.e. occupational disease) can be established by cause or contribution to employment.

40. Fourthly, this amendment also minimizes the importance of non-critical risks in workplace health and safety. Issues such as stress and fatigue are important health and safety issues that need to be managed, not only for worker wellbeing, but also for the role they have on serious health and safety near misses and incidents. Critical factors of stress and fatigue, and other elements such as workplace ergonomics, workloads, hours of work etc. do not neatly fit the proposed definition of critical risk, yet over time can accumulate and become a critical risk.

41. Many so-called 'low risk' injuries suffered by workers such as musculoskeletal issues, work-related mental harm/ psychosocial harm, and violence and aggression in the workplace have a significant impact on the lives of workers, both to their health, and to their livelihoods. It is short-sighted and unethical to reduce the system's capacity for addressing these risks.

42. These risks also make up the bulk of health and safety incidents. For instance, WorkSafe research estimates that musculoskeletal injuries account for 27% of the total burden of work-related harm.[6]

43. Furthermore, alleged 'lower grade injuries' make up more than 50% of ACC's work-injury costs, which in 2024 was at a cost of around $630m.[7] These amendments have the potential to dramatically increase ACC costs via an increase in treating injuries from

[6] Work health and safety | An overview of the work-related harm and risk in Aotearoa New Zealand | WorkSafe
[7] ACC warns Brooke van Velden: Your reforms will cost us more in payouts | 13 June 2025 | Stuff NZ - https://www.stuff.co.nz/politics/360720213/acc-warns-van-velden-your-reforms-will-cost-us-more-payouts

'non-critical' risks. We note that ACC have expressed serious concern with the impact these changes will have on the New Zealand worker compensation scheme and on business productivity.

44. Finally, the imposition of a new statutory requirement to 'prioritise critical risk' also runs counter to the stated objective of this bill. The proposed definition of "prioritise" includes managing critical risks before other risks, monitoring and reviewing critical risk controls more frequently, and applying a higher proportion of risk management resources to critical risks. In practice, this means that common health and safety risks that are not deemed critical risks, such as those outlined above, will now receive less attention, and resource then they are currently receiving. Fundamentally, this proposed law change tolerates putting workers at greater risk of harm.

45. It is telling that this bill specifically states that a failure to meet the new requirement to prioritise critical risk is not an offence against the Act. This completely undermines any policy to sharpen the focus onto critical risk.

46. The bill states that it seeks to support the continued reduction of workplace harm while conflictingly instructing duty holders to deprioritise significant categories of harm, and then also fails to hold businesses that do not prioritise critical risk to account.

47. Overall, this particular amendment simply does not align with a proportionate risk-based health and safety system, or the stated aims of the bill. Effectively, businesses are being asked to run through a mandated tick box exercise to review a list of critical risks, after which they are required to undertake a wholly subjective review of their business for any residue critical risks. Compared to best contemporary practice (review your businesses practices and address the risks that are arising) this proposed amendment appears to actually create the problems it is seeking to address:

    - Increases uncertainty about business practice by requiring businesses to consider a set list of risks that may or may not apply to their work.
    - Increases uncertainty by including the subjective 'likely' test without criteria. Leaving workplaces in the dark about meeting their critical risk duties.
    - Increases compliance costs by requiring unnecessary compliance requirements, and doubling up on risk identification practice.
    - Increases uncertainty by legislating a subjective analysis of critical risk.
    - Does not support continued reductions of workplace incidents by de-prioritizing important and costly health and safety risks and hazards.

48. Simply put this proposed amendment to prioritize critical risks does not align with duty-holders managing the particular risk profile of their businesses and undertakings.

49. We suggest that supporting understanding of proper risk management is better suited to guidance and workplace support/ engagement. If legislative amendment is sought, a simple addition would be to include the hierarchy of controls into HSWA. This

recommendation has been made in Australia in the Boland Report to address business concerns with confusion and uncertainty of what to do to meet their duties.

Small business carve-outs

50. The changes relating to 'small PCBUs' are some of the most egregious of the proposed amendments and we strongly recommend that they be scrapped. This includes the new definition of 'small PCBU' and the wholesale reduction of duties to address critical risk and obligation to only provide barebones welfare facilities.

51. There is no principled reason that workers should be afforded lesser health and safety protection based solely on the size of the business that employs them. Notwithstanding serious concerns with worsening health and safety outcomes in small enterprises, it is completely unethical to reduce health and safety duties across a section of the workforce that has historically had worse health and safety outcomes.

52. In short, a reduction in health and safety duties will not lead to improved outcomes. It simply pushes the burden of harm onto the workers themselves; this is untenable.

53. New Zealand's risk-based approach to health and safety already enables small businesses to scale their health and safety requirements to the size of the risks that the small business produces.

54. There are several (hopefully) unintended consequences introduced via these provisions:

55. Our primary concern is the establishment of a two-tier system of health and safety at work. Workers in small business are now offered less protection at work compared to workers in larger businesses, even if the work is ostensibly the same.

56. The proposed amendments significantly strip back the health and safety duties of small PCBUs to the point where they are only required to manage their critical risks, provide information, supervision, training, instruction, and personal protective equipment (PPE) for identified critical risks, and to provide basic worker welfare facilities. This extremely limited scope is concerning.

57. In particular, the explicit change for small PCBUs to only be required to provide PPE for critical risks is worrying. This change does not remove those non-critical risks, but does mean that workers in small businesses may be exposed to those risks without the most basic of mitigations provided. This change also risks putting the costs of PPE onto workers who believe PPE is necessary but have not been provided it by their employer.

58. The second concern is the complication of supply chains where large businesses engage/ contract small businesses. Where full health and safety duties and practices remain on the large business, they no longer do so for the small enterprise. This is likely to result in issues of conflicting health and safety systems between workforces (of large and small enterprises), despite working together, and is likely to complicate (or undermine) a joint health and safety response. For example, this may result in some workers being provided PPE working alongside workers with no PPE provided, undertaking the same work, with the same risk profile.

59. Under these changes it appears that a large business can't require a small business it contracts with to improve practice, or meet their prescribed health and safety standards as a requirement of doing business. This represents a significant departure from the HSWA, which seeks to ensure a comprehensive system of workplace health and safety where supply chains and duty holders work together to improve safety outcomes.

60. These issues have massive scope to increase regulatory confusion, and compliance costs, contrary to the stated objectives of the amendments.

61. Our third concern is that these changes encourage the gamification, where businesses can be perversely incentivised to arrange their businesses to meet the proposed definition of 'small PCBU' via restructure or arrangement of work activity, to undercut their health and safety commitments. This may also undermine fair tendering and procurement processes, where businesses operating under reduced health and safety obligations can price work more cheaply than competitors, making poor health and safety practices a competitive economic advantage rather than a systems failure.

62. One of the stated objectives of this bill is to support the continued reduction in the incidence of workplace fatalities, injuries, and illnesses; these small PCBU amendments are not in line with this goal. It is also disappointing to see that the Government's plan to increase certainty for businesses about what they need to do, is to simply have them do less. Doing less is also not in line with the objective of the Bill to support continued reductions in the incidence of workplace injuries and illnesses.

63. All businesses should be able to deliver good health and safety outcomes efficiently and effectively regardless of their size or health and safety risk profile.

64. We strongly recommend that the select committee advises these changes not to proceed. Small PCBUs can be supported towards improved health and safety practices via proactive policy, including guidance, targeted engagement, and other support, rather than poorly designed legislative carve-outs.

Overlapping legislation

65. The bill proposes a raft of amendments to address what has been identified as "clarifying areas of confusion".

66. The first of these relates to 'overlapping legislation' and deems compliance with health and safety duties where a specified risk is found in another enactment outside of the HSWA.

67. The primary issue with this change as drafted is that deemed compliance with HSWA duties is triggered by compliance with external requirements regardless of whether the purpose of those external requirements is to manage risk to work health and safety. This means that legislation drafted for non-health and safety purposes can satisfy HSWA duties.

68. This is broadly concerning given that the external enactment need not have been designed with workers in mind, need not have been consulted on for health and safety

purposes, and need not meet any equivalence test with the HSWA standard of reasonably practicable.

69. The provision is also vague and open-ended, and the extent of the application of these external enactments is currently unknown. There are likely to be further unintended consequences, and this change is expected to create regulatory uncertainty by having non-health and safety regulations overriding the primary HSWA duties.

70. There is huge scope for sectors and industries that have 'external requirements' under other enactments to be accidentally removed from coverage under the HSWA. There are likely instances where external requirements will override HSWA in cases where we do not want this to occur. This is concerning in particular, for professions such as healthcare and disability services, education and training, and transportation.

71. These provisions are likely to increase confusion in the regulatory landscape, running contrary to the stated objectives of the bill. We recommend that this provision does not proceed to ensure ongoing system clarity.

Officer duties

72. The second set of amendments to 'clarify areas of confusion' regards officer duties where the bill proposes changes to s44 to confine officer due diligence duties strictly to their governance role.

73. This change effectively reverses the High Court's position in Sarginson v Civil Aviation Authority, which established that due diligence obligations extend to both an officer's governance obligations and to their role in the day-to-day operation of the PCBU.

74. We do not support these changes and view them as unnecessary.

75. This change also undermines the judicial process in the upcoming High Court appeal of the decision in Maritime NZ v Gibson, the central issue in that appeal being the clarification of the boundary between an individual's duties as an operational manager within a PCBU and their separate duties as an officer of that same PCBU.

76. We are also deeply concerned that the combined effect of these changes will be a further reduction in officer prosecutions. Maritime NZ v Gibson was itself a rare and significant case of an officer-level prosecution under HSWA. There have been very few of these important cases, having been limited by the lack of resource and reluctance of regulators to pursue them. Further scoping the officer duty through legislation, at the same time as WorkSafe's enforcement capacity is being cut and its direction shifted toward engagement over enforcement, will further reduce officer accountability when workers are killed or seriously harmed.

Notification requirements

77. The CTU notes that the changes to include examples of notifiable injuries codifies WorkSafe guidance of examples of notifiable injuries and illnesses. We also note that cabinet papers indicate that this change is intended to reduce notifications to reduce

perceived compliance burdens.[8] We do not agree with the underpinning logic of the cabinet paper.

78. Overall, while this amendment in its current form is somewhat unnecessary it is generally unproblematic, although we do not want to see a chilling effect on notifications which are an important part of system response actions and information sourcing across the health and safety system.

Changes to Approved Codes of Practice

79. The CTU has long advocated for an increase in the development of Approved Codes of Practice (ACOPs). ACOPs are a critical guidance piece in the health and safety system, and are important documents for both PCBUs and workers to understand and rely on good practice.

80. However, we do not support the proposed safe harbour status for ACOPs because of the perverse disincentive it establishes against continuous improvement across the health and safety system. This bill does this through the introduction of a new section outlining that acting in accordance with an ACOP must be taken to have complied with the Act and regulations (s226(2)). Essentially this means acting in accordance with an ACOP is a full defence against any charges under the HSWA and associated regulations.

81. Establishing that compliance with an ACOP is a complete defence against duties under the HSWA is regressive policy in the name of business certainty. Such safe harbour status may have serious unintended consequences and impacts on regulator activity.

82. This change hugely incentivises following ACOPs to the letter, and no further. This policy change is antithetical to the principle of continuous improvement, and the recognition that changes to ways of work must be met with proportionate health and safety responses.

83. Questions need to be asked regarding what happens when new technology or ways of work are introduced, changing how work is done? In that case what is best practice, and therefore what is reasonably practicable? Safe harbour status disincentives uptake of new and improving practice to retain a complete defence against charges under HSWA.

84. In addition, the changes to support industry produced ACOPs are potentially undermined by the safe harbour policy. The development of ACOPs is being incentivised to focus only meeting the lowest common denominator to ensure practice is ring-fenced from regulator oversight.

85. Historically, New Zealand has been slow to develop or update ACOPs. And although WorkSafe has been directed to increase ACOP and other guidance capacity, the organization's resource has been significantly cut over the past three years, including the loss of key subject matter expertise to support ACOP development. The ability for

[8] Health and Safety Reform: further Legislative changes | Office of the Workplace Relations and Safety Minister at page 8

industry to pick up work to maintain and update the future suite of ACOPs appears to be overestimated.

86. It is therefore of concern that ACOP development may over time fail to meet the operational reality of work as done and cement health and safety practice at a period in time. Having outdated ACOPs retain complete defence status is not going to aid the ongoing reduction in the incidence of workplace fatalities, injuries, and illnesses.

87. We recommend that the provisions for safe harbour status do not proceed.

Increasing inequities

Disproportionate impact on Māori workers

88. Māori continue to experience higher rates of acute harm workplace injury. Despite work undertaken by WorkSafe in previous years to address the higher rates of harm for Māori, this inequity persists.

89. Notably the serious non-fatal work-related injury rate for Māori has trended down[9] (although remains higher compared to other groups), supported by the WorkSafe Mauriti strategy. Unfortunately, despite progress, the Mauriti strategy has been paused under the current Minister of Workplace Relations and Safety.

90. WorkSafe research indicates that Māori are more likely to be exposed to many of the "lower harm" risks that this bill deprioritises such as biomechanical musculoskeletal risks, fatigue from working long hours, and exposure to offensive behaviours.[10] The proposed changes, which is set to deprioritise these health and safety risks, will disproportionately impact Māori workers.

Further de-prioritization of occupational harm for women

91. Women workers often face specific and underrecognized risks in the workplace such as psychosocial harm, gendered violence and harassment, and ergonomic/ musculoskeletal risks (such as lifting and patient handling in care and support work). These risks are historically underrepresented in health and safety frameworks that focus on physical and acute industrial hazards.

92. The bill's "critical risk" framework, including the regressive critical risk definition, continues to fail to recognise the impact of these risks.

93. This means that workers in small businesses in female-dominated industries such as aged care, disability support, and early childhood education are set to have their health and safety protections systems weakened, with their employer/PCBU having no legal obligation to manage key risks to their health and safety, or to provide training, support or PPE for risks deemed to not be critical.

[9] WorkSafe annual report 2024/25
[10] Work health and safety an Overview of work-related harm and risk in Aotearoa New Zealand | WorkSafe

94. The proposed prioritisation framework is built around the traditional, male-dominated industrial hazard profile that has long dominated health and safety practice.

Entrenching barriers to health and safety in small businesses

95. Workers in small businesses already face significant structural barriers to health and safety at work. Their proximity to management means higher exposure to the inherent power imbalance in the employment relationship. Other employment factors such as insecurity of work, casual work, and flexible hours are common in small businesses and can have a chilling effect on good health and safety practice in these enterprises.

96. This bill removes key health and safety duties from small business PCBUs across a section of the economy where barriers to meaningful worker participation in health and safety are already most entrenched.

97. These amendments tell workers in small businesses that their health and safety is not valued.

Potential breaches of International Conventions and Agreements

98. We have serious concerns that these amendments potentially place New Zealand in breach of its obligations under fundamental International Labour Organization (ILO) conventions.

99. New Zealand has ratified ILO Convention 155 (Occupational Safety and Health) and, while it has not formally ratified Convention 187 (Promotional Framework for Occupational Safety and Health), both are designated ILO fundamental conventions. These are conventions of utmost importance that all member states are expected to meet, regardless of formal ratification status.

100. The proposed amendments in this bill give rise to multiple potential breaches of Convention 155. For instance:

- The de-prioritisation of enforcement sits uncomfortably with Article 9, which requires that adequate and appropriate systems of inspection be in place.
- Articles requiring engagement with the most representative organisations of workers are potentially breached by the exclusion of the CTU from the development process. Notably business representation was well included as noted in the RIS that BusinessNZ, Retail NZ, Federated Farmers and the Employers and Manufacturer Association were all targeted for engagement.[11]
- Article 16 requires employers to take action at the level of the undertaking to ensure workplaces are safe so far as is reasonably practicable, including the provision of personal protective equipment. The removal of PPE obligations for non-critical risks in small PCBUs appears to be in direct conflict with this requirement.

[11] Regulatory Impact Statement Work Health and Safety Reforms – Further Policy Decisions on the Reform Bill

- Article 17, which requires cooperation between employers sharing a worksite, is undermined where a small PCBU working alongside a larger PCBU on the same site has no duty to manage non-critical risks, creating an asymmetry of obligation that makes genuine coordinated health and safety practice doubtful.

101. In relation to Convention 187, the ACOP safe harbour provisions are arguably the biggest potential breach of the continuous improvement principle in Article 2. By deeming compliance where an employer meets an ACOP standard, the Bill actively disincentivises improvement beyond that floor, locking in current practice rather than driving progressively higher standards as the convention requires. The absence of engagement with representative worker bodies in developing these reforms also conflicts with the national policy and consultation requirements in Articles 3 and 4.

102. Beyond ILO obligations, the amendments also appear to potentially breach New Zealand's commitments under the New Zealand-European Union Free Trade Agreement. The Trade and Sustainable Development chapter of that agreement, specifically Article 19.2, expressly prohibits either party from weakening or reducing the levels of protection afforded in labour law in order to encourage trade or investment. The same is true of the New Zealand–United Kingdom Free Trade Agreement, Article 23.6.

103. These amendments do precisely that, reducing employer obligations across a significant portion of the economy framed around reducing compliance costs and increasing business confidence. That framing is, on its face, the kind of trade and investment incentive that Article 19.2 prohibition was designed to prevent.

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